

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 758 OF 2016**

**DISTRICT : AURANGABAD**

Shri Jagdish S/o Mohanrao Kale,  
Age : 46 years, Occu. : Service,  
(as Deputy Executive Engineer  
[Electrical], P.W. Division,  
A'bad), R/o : Plot No. 60,  
Gut No. 142, Chhatrapati Nagar,  
SataraParisar, Beed Bye-Pass,  
Aurangabad.

**.. APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra  
Through its Secretary,  
Public Works Department,  
M.S. Mantralaya, Mumbai-32.
- 2) The Chief Engineer (Electrical),  
Public Works Department,  
Mumbai.
- 3) The Superintending Engineer,  
Pune Region (Electrical) Circle,  
Public Works Division, Pune.
- 4) The Executive Engineer (Electrical),  
P.W. (Electrical Division),  
Aurangabad.

**.. RESPONDENTS**

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APPEARANCE : Shri A.S. Deshmukh, learned for the  
applicant.

: Shri M.P. Gude, learned Presenting Officer for  
the respondents

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**Coram** : **Hon'ble Shri Justice M.T. Joshi, Vice Chairman**

**Date** : **02.08.2017**

**ORAL ORDER**

Heard Shri A.S. Deshmukh, learned for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. The present applicant is challenging the order issued by the res. no. 1 dated 28.9.2016, whereby he was transferred from the post of Deputy Executive Engineer (Electrical), P.W. Division, Aurangabad to the post of Deputy Engineer (Electrical) (Personal Assistant), Executive Engineer, Amravati Electrical Division, Amravati. This transfer is admittedly a midterm and mid-tenure transfer and the applicant submits that the said order is passed against the provisions of sec. 4 (4) & 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of delay in Discharge in Official Duties Act, 2005 (for short the Transfer Act, 2005). Interim relief granted against the order is continuing till this date.

3. The respondents filed affidavit in reply in support of the impugned transfer order. It was submitted that, in view of the decision in writ petition no. 9386/2015 dated 3.8.2015 by the Hon'ble Bombay High Court, Aurangabad Bench, the applicant was required to be reinstated in service and, therefore, he was reinstated on non-executive post vide the Government order dated 11.4.2016. Later on the said writ petition came to be withdrawn by the applicant.

Temporary posting was given to the applicant and regarding detailed posting, the case of the applicant was placed before the Civil Services Board on 16.5.2016, 20.5.2016 & 23.5.2016 constituted under the Chairmanship of Principal Secretary, Public Works Department vide G.R. 15.5.2016. The proposal was sent for transfer of the applicant to the competent authority i. e. Hon'ble Minister of the Public Works Department. As per the recommendation of the Civil Services Board and with a approval of the competent authority a detailed posting order was issued on 31.5.2016. In view of this order, the applicant has joined on 31.5.2015 at Aurangabad. It was however brought to the notice that the charges against the applicant in a departmental enquiry are pertaining to the same circle where he is now posted and, therefore, the Chief Engineer (Electrical) brought this fact to the notice of the competent authority i. e. the Government and, therefore, on administrative ground the applicant was transferred to Amravati as detailed supra.

4. It was further submitted by the respondents that it was necessary to fill up the vacant post at Amravati. Posting of the applicant at Aurangabad was on non executive post. As the post held by the applicant at Aurangabad is under the same Circle, where he was earlier posted and charges against him are from the same circle, there is every possibility that the departmental enquiry would be affected. Therefore, considering the above two facts a conscious decision was taken by the competent authority to transfer the

applicant from Aurangabad to Amvarati and, therefore, it cannot be said to be against the provisions of Transfer Act, 2005 and, therefore, the respondents prayed to dismiss the present original application.

5. Two grounds are taken by the respondents for effecting the transfer of the applicant from Aurangabad to Amravati. Out of these two reasons, last one of the difficulty that may be faced in pursuing the departmental enquiry against the applicant. In view of this reason, on 15.3.2017 a order was passed by the Tribunal directing the learned P.O. to file copies of the minutes to find out whether this reason was placed before the Board at the time of passing of the impugned order. After granting sufficient opportunities ultimately copies of the minutes of the meetings held on 16.5.2016, 20.5.2016, 23.5.2016 & 23.8.2016 were filed. In the minutes it was recorded that the Chief Engineer (Electrical) has brought to the notice of the Civil Services Board that posting of the applicant at Aurangabad may affect the departmental enquiry.

6. The learned P.O. took time to find out whether there is any communication from the Chief Engineer, Mumbai to the Government pointing out the said reason. Ultimately, the learned P.O. on 20.7.2017 filed a communication dated 20.7.2017 on record, which was accepted and placed as document 'X'. The said communication dated 20.7.2017 would show that, there is no communication from the Chief Engineer (Electrical), Mumbai as such.

7. It is to be noted that, when the applicant was posted at Aurangabad, the departmental enquiry was already initiated against him. There is no communication from Chief Engineer (Electrical), Mumbai to the Government or the Board that continuing the applicant at Aurangabad may hamper the progress in the departmental enquiry.

8. In view of these facts, one of the justification tendered by the respondents for issuance of impugned transfer order could not survive. However, it is not known as to whether any other Officer holding the same post in Maharashtra would be available for posting at Amravati, as the present applicant was transferred for two reasons jointly. In that view of the matter, the impugned transfer order cannot stand. Hence I pass the following order :-

### **ORDER**

The original application stands allowed without any order as to costs and the impugned order dated 28.9.2016 (Annex. A.6) is hereby quashed and set aside.

**VICE CHAIRMAN**